

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 31, 1996

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Rm 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Implementation
of the Local Competition Provisions
in the Telecommunications Act of 1996
CC Docket No. 96-98

Dear Mr. Caton:

Please find enclosed for filing an original plus sixteen copies
of the REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON
THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket.

Also enclosed is an additional copy of this document. Please
file-stamp this copy and return it to me in the enclosed, self-
addressed, postage pre-paid envelope.

Very truly yours,

A handwritten signature in cursive script that reads 'Helen M. Mickiewicz'.

Helen M. Mickiewicz
Principal Counsel

HMM:dp

Enclosures

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ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Implementation of the Local Competition) CC Docket No. 96-98
Provisions in the Telecommunications Act)
of 1996)
_____)

**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE
OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION AND SUMMARY

The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC) respectfully submit these reply comments to the Federal Communications Commission (FCC or Commission) on the Notice of Proposed Rulemaking (NPRM) regarding the implementation of the local competition provisions in the Telecommunications Act of 1996 (hereafter, the 1996 Act). This Commission set separate dates for opening and reply comments on dialing parity, number administration, notice of technical changes and access to rights of way. In these, California responds to opening comments of other parties on two issues only: dialing parity and access to rights of way. California has no reply comments on the two other issues.

Because it was not physically possible for California to read all filings and respond to every issue raised by every party, the CPUC has limited these reply comments to those issues

it considers the most important for the Commission's consideration. California's silence on issues not addressed here should not be taken as either agreement or disagreement.

In summary, California repeats its recommendation that, in implementing dialing parity, the Commission should require customer notification of carrier selection procedures. Further, California opposes Commission adoption of a rule, proposed by SBC Communications, authorizing incumbent LECs to treat themselves preferentially in access to their rights of way.

II. DIALING PARITY

In its opening comments, SBC Communications (SBC) urges the Commission not to establish any procedures requiring LECs to notify consumers of carrier selection procedures. California disagrees with SBC's recommendation.

SBC argues that requiring states to provide customers with notice of alternative carrier choices could force incumbent carriers to finance advertising for new industry entrants.¹ The CPUC reiterates its view, articulated in opening comments, that customer notice is necessary for customers to make informed choices among available carrier options. Consequently, LECs should be required to notify consumers about carrier selection procedures. We do not believe this notice would be extensive or burdensome. It is not the CPUC's intent that incumbent carriers "advertise" for their new competitors. Rather, incumbents should

1. CC Docket 96-98, Opening Comments of SBC, p. 4.

be required to educate consumers that choices are available for services which were formerly were provided solely by the incumbent.

When the CPUC allowed competition in the intraLATA toll market, it required the incumbent LECs to notify customers of their option to choose an alternative carrier. This new customer education requirement was not disputed on the grounds that it was unpaid advertising. Incumbent LECs possessing the overwhelming majority of the market should be required to inform their customers of how those customers may select an alternative carrier. We disagree with SBC that any notice would constitute an unfair burden on the incumbent carrier. The Commission must balance this minor imposition on the need for achieving fairness in the competitive marketplace.

III. ACCESS TO RIGHTS OF WAY

In their opening comments, both Pacific Telesis Group (Telesis) and GTE Service Corporation (GTE) recommend that the Commission draft general guidelines for access to rights of way that would recognize a special status for the incumbent as the owner of the assets. Specifically, Telesis and GTE recommend that the Commission's guidelines allow the entity owning the right of way to treat itself differently from how it treats other parties requesting access to those assets.² Telesis argues

2. CC Docket 96-98, Opening Comments of Pacific Telesis Group, p. iv; GTE Service Corp., p. 27.

that it should be able to reserve space on poles and conduits it constructs to meet future business requirements as long the reservation period is reasonable.³ Similarly, GTE states that "nondiscriminatory" access does not mean that the same terms and conditions should be applied to the owner of the property.⁴

The CPUC disagrees with the positions asserted by Telesis and GTE. In its opening comments, the CPUC stated that a LEC should not show favoritism toward itself or its affiliates, nor should it be allowed to discriminate against service providers trying to enter the market. The CPUC also noted that it is currently examining rights-of-way issues in ongoing workshops, and is including electric utilities in a broader discussion of competitive access to utility rights of way. Given the need to include other industries in this discussion, including industries beyond the jurisdiction of the FCC, California urges the Commission to defer development of regulations until parties have had more time to examine these rights of way issues.

Further, the CPUC does not support Commission adoption of a guideline allowing owners of assets to treat themselves preferentially. Such a rule would be contrary to other provisions of the 1996 Act, which prohibit the incumbent LECs from treating themselves differently from their competitors.⁵

3. CC Docket 96-98, Opening Comments of Pacific Telesis Group, p. 20.

4. CC Docket 96-98, Opening Comments of GTE Corp., p. 27.

5. See, for example, §§ 251(b)(1) and (b)(3), § 251(c)(2)(D), § 251(c)(3), and § 251(c)(4)(B).

However, if the Commission deems a general guideline allowing preferential treatment to be necessary, the CPUC recommends that the owner of the right of way bear the burden of justifying, on a case-by-case basis, why preferential treatment should be authorized.

IV. CONCLUSION

The CPUC respectfully submits these reply comments on dialing parity and access to rights-of-way for the Commission's consideration in this interconnection rulemaking.

Dated: May 31, 1996

PETER ARTH, JR.
EDWARD W. O'NEILL
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By:


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Attorneys for the People of
the State of California and
the Public Utilities
Commission of the State
of California

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has this day been served upon all known parties of record herein.

Executed at San Francisco, California, this 31st day of May, 1996.

Helen M. Mickiewicz
Helen M. Mickiewicz

Counsel for the People of the
State of California and the
Public Utilities Commission of
the State of California